

10 January 1978

PREPARED STATEMENT  
OF  
STANSFIELD TURNER, DIRECTOR OF CENTRAL INTELLIGENCE  
ON PROPOSED LEGISLATION TO GOVERN  
ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES  
BEFORE THE SUBCOMMITTEE ON LEGISLATION  
HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

Thank you, Mr. Chairman and members of this Subcommittee, for your invitation to appear and express my views on proposed legislation governing electronic surveillance for foreign intelligence purposes. Last summer I appeared before the Senate Judiciary Committee and the Senate Select Committee on Intelligence to testify concerning S. 1566, the Senate counterpart of H. R. 7308. At that time I indicated my support for S. 1566, and for the judicial warrant requirement that is a central feature of that bill. I reaffirm that support today, and in the interest of saving time I would like to submit my previous Senate statements for the record, make a few additional remarks, and then proceed to answer any questions you may have.

We are concerned here with activities that have never before been regulated by statute, the whole field of national security surveillance, at least in its foreign intelligence aspects, having been left aside when the Congress enacted the Omnibus Crime Control and Safe Streets Act in 1968. To legislate comprehensively in this field, as H. R. 7308 and S. 1566 seek to do, is a difficult and complex business. To begin with, the foreign intelligence surveillance activities themselves are diverse, as to purpose, as to technique, and most importantly as to degree of threat they pose to the rights of Americans to communicate in private without fear of being overheard

by their Government. Beyond this pattern of factual diversity lie the hard legal and policy issues that have caused such long debate and heated controversy. Who are the permissible targets of this sort of surveillance; what circumstances justify the intrusion, particularly where the communications of Americans are concerned, and what level of proof should be required to demonstrate the existence of those circumstances; how should responsibility be fixed within the executive branch, and to what extent should the approval function be shared with the judicial branch; how long should such surveillance be allowed to continue; how should incidentally acquired information be controlled; and what happens if a party to an intercepted communication subsequently becomes a criminal defendant and demands to know whether he has been overheard, or if the Government seeks to use the fruits of surveillance as affirmative evidence of a criminal offense?

Among the various bills that have been introduced, it seems to me that H. R. 7308 and S. 1566 represent the best and the most careful accommodation of the various interests to be served. On the one hand, unlike H. R. 5632, which has a criminal law orientation, they recognize foreign intelligence surveillance activities for what they are in fact -- namely, means of obtaining necessary information about foreign powers and their agents rather than aids in the detection and prosecution of a crime. Secondly, the provisions of these bills differentiate between the activities that are most likely to result in the acquisition of U. S. person communications, and therefore are most open to abuse and most threatening from a civil liberties standpoint, and those other activities, directed

against official foreign power targets, that present very little likelihood that the privacy of American communications will be invaded or that private information about Americans will be acquired. It is in that regard, for example, that the bills provide for a two-tier warrant procedure, altering the approval and other requirements as between surveillance directed against official foreign power targets and the other permissible targets of surveillance. The distinctions made in this respect, which appear throughout the bills, are crucial and in my opinion mark a real improvement upon S. 3197, the forerunner of S. 1566 in the Senate and the counterpart of H. R. 5794. Additionally, and obviously a matter of key importance, the two bills contain an impressive array of safeguards designed to assure that U. S. persons are not monitored in the exercise of their First Amendment rights or because of legitimate political activities in which they may be engaged, and that no improper use is made of any information about Americans that might be picked up as a surveillance by-product.

I have said before that there are certain risks associated with the statutory approaches reflected in H. R. 7308 and S. 1566. The proliferation of sensitive information always involves risks, and the statutory procedures will unquestionably lead to such a proliferation. But on balance I believe the risks should be accepted, and while compliance will be somewhat onerous, I cannot say that any proper or necessary governmental purposes will be frustrated by these statutes or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost.

It should also be understood, as I am sure it already is by the members of this Subcommittee, that the CIA is not itself involved in the conduct of surveillance

activities that will be authorized by these bills. However, as matters now stand I have a role in the process through which some of these activities are considered within the executive branch and are forwarded to the Attorney General for his approval, and I would expect to assume a comparable role as a certifying officer were this legislation to become law.

In sum, my overall view is that H. R. 7308 and S. 1566 strike the correct balances, and I believe those balances could easily be upset by the substitution of alternate legislative approaches.